



In 2008, petitioner was charged in this court by way of a superseding indictment with four counts of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). Subsequently, pursuant to plea agreement, he pled guilty to two of those counts. After an evidentiary hearing, on 1 December 2008, the court sentenced petitioner to a total term of 240 months imprisonment. Petitioner appealed, but, by mandate issued 6 August 2009, the Fourth Circuit Court of Appeals dismissed the appeal. (DE ## 58-60.)

On 28 November 2012, petitioner filed the instant motion, claiming that his “prior North Carolina convictions for larceny and possessing cocaine are not felonies for purposes of § 922(g)(1) because [he] could not have been imprisoned for more than one year for these offenses” in light of United States v. Simmons, 649 F.3d 237 (4<sup>th</sup> Cir. 2011) (en banc). (Mem., DE # 67-2, at 3 (footnote omitted).) He requests that his conviction and sentence be vacated. (Pet., DE # 67, at 14.)

In response, the government acknowledges that petitioner’s “prior felony convictions were not punishable by a term of imprisonment exceeding one year;” waives any statute of limitations defense; and, recognizes that petitioner was erroneously convicted of being a felon in possession of a firearm. (Resp., DE # 70, at 2-3.)

The court agrees that petitioner is entitled to relief. Accordingly, the motion is GRANTED. The judgment entered 5 December 2008 is hereby VACATED. Petitioner is

ORDERED to be released from federal custody, subject to pending detainers, if any.

This 14 December 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge